

# EXHIBIT 1

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE,

Plaintiff,

v.

FOREVER RESORTS, LLC; LAKE  
OROVILLE MARINA, LLC; REX  
MAUGHAN; and BILL HARPER,

Defendants.

No. 2:16-cv-01595-MCE-EFB

**ORDER**

Presently before the Court is the Government's Motion Seeking an Order Regarding Ongoing Jurisdiction, which it filed along with its U.S. Comment Re Settlement. Mot., ECF No. 48. After the Court rejected the parties' third attempt to settle this dispute, ECF No. 44, the parties filed yet another Stipulation to Dismiss, this time without filing a copy of the consent judgment or settlement itself. ECF No. 45. The Government then filed a Notice informing the Court that it had requested to review the parties' settlement documents—a right granted to the Government under 33 U.S.C. § 1365(c)(3)—but had not received anything from the parties at that time. ECF No. 46. Thereafter, the parties provided the Government with a copy of their most recent settlement agreement, which the Government then attached to an updated Notice to the

1 Court. ECF No. 47.

2 In the present Motion Seeking Order Regarding Ongoing Jurisdiction, the  
3 Government takes no position as to the substance of the parties' most recent settlement,  
4 but expresses its "concerns . . . [with] the process being used to resolve this matter and  
5 the potential that a similar approach could be used to evade review by both the courts  
6 and the United States in future Clean Water Act citizen suit actions." Mot. at 1. It thus  
7 seeks to have the Court retain jurisdiction over the matter pending the Government's 45-  
8 day review period under the Clean Water Act. The Court shares in the Government's  
9 concerns and GRANTS the pending Motion.<sup>1</sup>

10 The parties here have filed a Stipulation of Dismissal under Federal Rule of Civil  
11 Procedure 41(a)(1)(A)(ii). Ordinarily, dismissals under that section do not require a court  
12 order, and thus do not require court review, let alone Government oversight. But—as  
13 the Government points out in its brief—such a stipulation of dismissal is expressly  
14 "[s]ubject to . . . any applicable federal statute." In this case, the applicable federal  
15 statute is the Clean Water Act, which expressly provides that "[n]o consent judgment  
16 shall be entered in an action in which the United States is not a party prior to 45 days  
17 following the receipt of a copy of the proposed consent judgment" by the Department of  
18 Justice and by the EPA. 33 U.S.C. § 1365(c)(3). If the Court does not retain jurisdiction  
19 during this 45-day review period, the Government's opportunity for review has no teeth.  
20 Moreover, the Government argues that the Court may order Plaintiff to submit a fee  
21 motion because the Court has the authority to look behind the parties' settlement to  
22 ensure compliance with prior court orders, including a previous order in this case  
23 denying the attorney's fees as unreasonably high.

24 Plaintiff on the other hand argues that because this is a settlement and stipulated  
25 dismissal, the extent of the Court's authority over it is the same as any settlement and

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27 <sup>1</sup> As previously noted (ECF No. 44), it might appear to a more cynical court that the parties in this  
28 matter agreed to drop the Proposition 65 claim in order to evade this Court's review. Even without that  
claim, however, the parties' current settlement of the Clean Water Act claims remains subject to both  
Court and Government review.

1 stipulated dismissal under Rule 41. Specifically, Plaintiff avers that the Court is limited to  
2 ensuring that all parties gave their informed consent and there was no improper behavior  
3 or wrongdoing. There being no evidence or allegation of wrongdoing, the Court need  
4 not take any further action, and the stipulated dismissal is effective.

5 The Court acknowledges that a consent judgment and a private settlement and  
6 stipulation of dismissal are not the same thing. Nevertheless, the underlying purpose of  
7 the two in this context is the same: to resolve the action and have some form of  
8 enforcement for that resolution. And the purpose of the Clean Water Act's 45-day review  
9 period is to provide the Government with the opportunity to ensure that the proposed  
10 consent judgment is in the public interest and promotes the goals of the Act "by seeking  
11 to restore and maintain the chemical, physical and biological integrity of the Nation's  
12 waters." Mot. at 5-6, citing 33 U.S.C. § 1251(a). It therefore makes little sense that  
13 parties to a Clean Water Act citizen suit—like the one here—could opt to privately settle  
14 their action and avoid the oversight mandated by § 1365(c)(3). For those reasons alone,  
15 the Court finds that it must retain jurisdiction over the present suit (and over Clean Water  
16 Act citizen suits in general) until the Government's review period has expired, regardless  
17 of the mechanism by which the parties wish to resolve the matter.

18 As for attorney's fees, Plaintiff is correct that under ordinary circumstances, the  
19 Court might not have the authority to look behind the parties' settlement and/or order a  
20 fees motion upon receiving notice of a stipulated dismissal. Nor does the Court make it  
21 a practice to do so. But this is not an ordinary case. First, this is a Clean Water Act  
22 citizen suit over which the Court retains jurisdiction, as set forth above. Second, as  
23 clearly laid out in the Government's Reply papers, the circumstances at play here  
24 suggest that the parties' settlement of this matter, combined with its settlement of the  
25 Proposition 65 claim in state court, may be in violation of this Court's previous orders.  
26 And finally, in light of the fact that the Proposition 65 claim was separately settled, the  
27 Court notes that the present attorney's fees request of \$47,500 may again be excessive.  
28 Of course, this is impossible to tell without a more substantial filing from Plaintiff

1 addressing the fees request, as the Court has previously ordered. See ECF No. 44.

2 For the above reasons, the parties stipulated dismissal is again REJECTED.

3 Plaintiff is ordered to show cause in writing not later than thirty (30) days from the date of  
4 the electronic filing of this Order, justifying its present request for attorney's fees. The  
5 Court hereby explicitly retains jurisdiction to review the disposition of the federal claims  
6 at issue in this litigation, which disposition now includes Plaintiff's attorney's fees  
7 request.

8 IT IS SO ORDERED.

9 Dated: August 28, 2018

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11 MORRISON C. ENGLAND, JR.  
12 UNITED STATES DISTRICT JUDGE  
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